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09/889,436	10/13/2001	Hans Westmijze	ACD2665 US	2901

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EXAMINER

REDDICK, MARIE L

ART UNIT	PAPER NUMBER
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1713

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 09/889,436
Filing Date: October 13, 2001
Appellant(s): WESTMIJZE ET AL.

Richard P. Fennelly
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed July 07, 2003.

(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

A statement identifying the related appeals and interferences that will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) Status of Claims

The statement of the status of the claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Invention

The summary of invention contained in the brief is correct.

(6) Issues

The appellant's statement of the issues in the brief is correct.

(7) Grouping of Claims

Appellant's brief includes a statement that claims 16-29 stand or fall together.

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

4,499,250	LUNDIN ET AL	2-1985
4,547,481	LUNDIN ET AL	10-1985

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EP 492,712 A1 TORENBEEK ET AL 01-92

WO 98/18835 AKZO NOBEL 05-98

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 16-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP 492,712 A1 in combination with International WO 98/18835, Lundin et al (U.S. 4,499,250) or Lundin et al (U.S. 4,547,481).

EP '712 discloses an initiating aqueous dispersion, for use in the polymerization of vinyl chloride (alone) or in admixture with up to 90 wt. % of other ethylenically unsaturated copolymerizable monomers, which contains 5 to 75 wt. % of at least one organic peroxide which includes peroxydicarbonates, diacylperoxides, etc., 1 to 20 wt. % of dispersing agent which comprises a polyether polysiloxane copolymer and/or a water-soluble copolymer of at least one alpha, beta-unsaturated dicarboxylic acid ester and at least one C8 to C24 alpha-olefin, esterified with at least one ethoxylated alcohol having a degree of ethoxylation of 1-45 and other conventional additives which include one or more vinyl alcohol copolymers, polyvinyl alcohols, sucrose esters, sorbitan esters and other standard additives which include surfactants, antissettling agents such as natural gums, at least 2 wt. % of anti-freeze agents such as C1-C4 alkanols,

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etc.(the Abstract, page 2, lines 3-5 & 46-56, page 3, lines 1-5 & 14-43, page 4, lines 7-22 & 37-46, page 5, lines 22-38, the Runs and Claims).

The disclosure of EP'712 differs basically from the claimed invention as per the non-express disclosure of an express directive to use, as the surfactant(s), the specifically defined ethoxylated fatty alcohol, as claimed. However, each of WO'835, Lundin '250 and Lundin '481 teach, basically, the use of storage stable aqueous dispersions/suspensions of peroxide-initiating systems, for use in the polymerization of vinyl chloride, alone, or in admixture with other ethylenically unsaturated copolymerizable monomer(s), containing non-ionic surfactants which include ethoxylated fatty alcohols governed by an HLB of 14.5 to 20.0 (WO '835) and greater than 15 and preferably above 17 (Lundin et al '250 & '481). See the Abstract, page 4, lines 16-27, page 5, lines 3-29, pages 6-8, page 9, lines 1-17, page 10, lines 21-29, pages 11-15, the Runs and Claims of WO'835, the Abstract, col. 1, lines 16-68, col. 2, lines 13-61, col. 3, lines 19-68, col. 4, lines 9-14 & 52-68, col. 5, lines 1-53, the Runs and Claims of Lundin et al '250 and the Abstract, col. 2, lines 17-65, col. 3, lines 23-68, cols. 4-6, the Runs and Claims of Lundin et al '481. Lundin et al '250 and Lundin et al '481 further teach the use of thickeners and/or protective colloids such as polyvinyl alcohol as suitable additives to the aqueous dispersion of the peroxide initiating system so as to prevent phase-separation (col. 5, lines 54-68 to col. 6, lines 1-7 of Lundin et al '250 and col. 5, lines 58-68 to col. 6, lines 13 of Lundin et al '481).

Therefore, it would have been prima facie obvious to the skilled artisan to add the ethoxylated fatty alcohol component of each of WO '835, Lundin et al '250 and Lundin et al '481 al to the aqueous peroxide initiating system of EP '712 and with a reasonable expectation of enhancing the stability of the peroxide initiating system-containing aqueous dispersion, i.e., a reasonable expectation of success.

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As to the dependent claims, if not taught or suggested, the limitations would have been obvious to the skilled artisan and with a reasonable expectation of success, i.e., any additional or particular claim parameters which may not be specifically set out in the references are considered to be inherent in the reference products or not to involve anything unobvious absent a showing to the contrary.

(11) Response to Argument

Let the record show that the Response will address the issues as they apply to Claim 16 only since Appellant indicated that the claims (16-29) stand or fall together.

A) Relative to EP 492,712/WO 98/18835, Lundin et al '250 or Lundin et al '481----It is urged and maintained that the instantly claimed invention is obvious within the meaning of 35 USC §103 (a) over EP 492,712 in combination with International WO 98/18835, Lundin et al (U.S. 4,499,250) or Lundin et al (U.S. 4,547,481) as per reasons clearly stated in the Grounds of Record supra.

The crux of Appellant's arguments appears to hinge on there being no motivation to one of ordinary skill in the art to combine the teachings of EP 492,712 with the teachings of International WO 98/18835, Lundin et al (U.S. 4,499,250) or Lundin et al (U.S. 4,547,481) since one would have to first select a peroxide emulsion containing the ethoxylated water-soluble copolymer and choose to leave out the polyether polysiloxane copolymer (EP '712) and omit the polyvinyl alcohol component (WO '835) without any direction or suggestion to do so and to choose an ethoxylated fatty alcohol over an ethoxylated fatty acid (Lundin et al '250 or '481). To this end, and with all due respect to Appellant's opinion, as to the selection of a peroxide emulsion containing the ethoxylated water-soluble polymer, EP @ page 3, lines 33-36, clearly teaches that the dispersing agent of the present invention contains a polyether polysiloxane copolymer and/or a water-soluble copolymer of at least one alpha, beta-unsaturated dicarboxylic acid ester and at least one C8 to C24 alpha-olefin, esterified with at least one ethoxylated alcohol having a degree of

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ethoxylation of 1-45 which clearly translates to the use of the polyether polysiloxane copolymer as an alternative to the esterified water-soluble copolymer. Furthermore, Appellant's claims, in their present form, simply don't preclude the polyether polysiloxane copolymer of EP '712 nor the polyvinyl alcohol component of WO '835 since the transitional phrase "consisting essentially of" limits the scope of the claim to the specific ingredients and to those that do not materially affect the basic and novel characteristics of a composition (Ex parte Davis, 80 USPQ 448 (PTO Bd. App. 1948); In re Janakirama-Rao, 317 F2d 951, 137 USPQ 893 (CCPA 1963)). As to having to choose an ethoxylated fatty alcohol over an ethoxylated fatty acid, firstly, there are only 2 species and there is not a lot of picking and choosing involved. Secondly, Appellant is cordially directed to Run 5 of each of Lundin et al which teaches a peroxide dispersion containing an ethoxylated fatty alcohol, viz., ethoxylated stearyl alcohol with an HLB of 16.5.

The issue is not whether Reference A and B specifically teach that they should be combined. The issue is whether one of ordinary skill in the art, confronted with the combined teachings of References A and B would have found their combination obvious. If it can be logically deduced that the reference will imply something to one of ordinary skill in the art that the reference does not come right out and say, then logical reasoning will make that reference evidence for its implicit disclosure, as well as for its explicit disclosure.

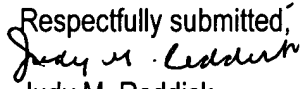
"In considering the disclosure of a reference, it is proper to take into account not only specific teachings of the reference but also the inferences which one skilled in the art would reasonable be expected to draw therefrom." In re Preda, 159 USPQ 342 (CCPA, 1968).


B) Relative to the Rejection under 35 USC § 112, 2nd paragraph, after further consideration coupled with Appellant's persuasive arguments, this rejection is not being maintained.

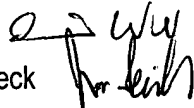

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C) Relative to Satomi et al (U.S. 4,734,135)-----Let the record show that the rejection supra has been modified to preclude Satomi et al as per such being considered merely cumulative to the prior art supra.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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JMR 
December 23, 2004

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